Supreme Court, U.S.
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No. 97-___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN STRANG et alia,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Are labor unions covered by the National Labor Relations Act required to provide nonmembers with financial statements that are audited by an independent certified public accountant, to explain and justify the amount of the agency fee; or, may they provide nonmembers with only unaudited statements prepared by union members in good standing, who are also paid employees of the union?

2) May a labor union covered by the National Labor Relations Act charge nonmembers for litigation expenses incurred outside their bargaining units?

3) May a labor union covered by the National Labor Relations Act charge nonmembers for bargaining expenses incurred outside their bargaining units, including expenses incurred for bargaining units covered by the Railway Labor Act, federal and state public sector labor laws, and Canadian labor laws?

PARTIES TO THE PROCEEDINGS BELOW

The Petitioners are Alan Strang, Richard A. Martin, Richard Dietrich, Thomas Gratz, Constance Downs, Darrold Kaestner, Charles Burnette, Bert Graham, Clarence Hull, William Koehly, Elizabeth S. Morehouse, Ronaele Joanne Findley, Melville James Arnot, James K. Humphreys, Leonard J. Kuhnlein, Denis McMahan, Donna M. Mendoza, Randall Sparks, James M. Sumter, Richard Price, Paul Sjotvedt, Randy D. Adams, Leah S. Harbison, Ruth Wright, Gene Dinsmore, Martha L. Payne, Mark V. Bluteau, David Mitchell and Lawrence Stone. These individual employees were charging parties before the National Labor Relations Board and filed their petition for review in the United States Court of Appeals for the District of Columbia Circuit (which subsequently transferred the petition to the United States Court of Appeals for the Seventh Circuit).[1] These individual employees also intervened in the cross-petition filed in the Seventh Circuit by the International Association of Machinists and Aerospace Workers ("IAM") and its affiliates.

The National Labor Relations Board ("NLRB") is the Respondent in this Court, and was a respondent in the court of appeals.

The IAM and its District Lodge Nos. 50, 66, 115, 120, 508, 720 and 751, and its Local Lodge Nos. 78, 354, 821, 946, 1125, 1327, 1871, 1916, 2024, 2227 and 2230 were respondents in the proceedings before the NLRB, and were cross-petitioners and intervenors in the United States Court of Appeals for the Seventh

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[1] Petitioners Strang *et alia* filed their petition for review in the D.C. Circuit (docketed as D.C. Circuit Case No. 96-1028). The IAM unions filed a simultaneous petition for review in the Seventh Circuit (docketed as Seventh Circuit Case No. 96-1246). On April 15, 1996, the Judicial Panel on Multidistrict Litigation randomly selected the Seventh Circuit to hear both of these petitions for review, pursuant to 28 U.S.C. § 2112. *In re National Labor Relations Board*, 936 F. Supp. 1091 (Jud. Pan. Mult. Lit. 1996). On August 6, 1996, the Seventh Circuit docketed Petitioners' transferred petition as Case No. 96-2928. On September 30, 1996, the NLRB filed a subsequent petition for enforcement, docketed as Seventh Circuit Case No. 96-3467.

Circuit. An employer, the California Saw and Knife Works, was also a respondent in the proceedings before the NLRB. California Saw and Knife Works did not participate in the review proceedings in the court of appeals.

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ALAN STRANG et alia,

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v.

NATIONAL LABOR RELATIONS BOARD

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners Alan Strang, Richard A. Martin, Richard Dietrich, Thomas Gratz, Constance Downs, Darrold Kaestner, Charles Burnette, Bert Graham, Clarence Hull, William Koehly, Elizabeth S. Morehouse, Ronaele Joanne Findley, Melville James Arnot, James K. Humphreys, Leonard J. Kuhnlein, Denis McMahan, Donna M. Mendoza, Randall Sparks, James M. Sumter, Richard Price, Paul Sjotvedt, Randy D. Adams, Leah S. Harbison, Ruth Wright, Gene Dinsmore, Martha L. Payne, Mark V. Bluteau, David Mitchell and Lawrence Stone respectfully pray that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered on January 14, 1998.

OPINIONS BELOW

The court of appeals' decision appears in Appendix A ("App.") at 1a, *infra*. It is officially reported as *IAM v. NLRB*, 133 F.3d 1012 (7th Cir. 1998). The decision of the National Labor Relations Board (App. B at 13a) is officially reported as *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995). The decision of the administrative law judge (App. C at 143a) is reported at 320 N.L.R.B. 273.

JURISDICTION

The opinion and judgment of the court of appeals were entered on January 14, 1998. This Petition was originally due April 14, 1998. On March 17, 1998, Petitioners filed an Application for an Extension of Time to File this Petition. By Order dated March 19, 1998, Justice Stevens extended the time for the filing of this Petition until May 14, 1998.

This Court has jurisdiction to review the decision of the court of appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the National Labor Relations Act, 29 U.S.C. § 141 *et seq.* which are primarily involved in this case are 29 U.S.C. §§ 157, 158(a)(3) and 158(b)(1)(A). In pertinent part, these statutes state:

> § 157. **Right of employees as to organization, collective bargaining, etc.**
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected

by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

§ 158. **Unfair labor practices**
(a) Unfair labor practices for an employer
It shall be an unfair labor practice for an employer—

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such employment or the effective date of such agreement, whichever is the later.

(b) Unfair labor practices by labor organization
It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title:...

STATEMENT OF THE CASE

Jurisdiction Below: Petitioners Alan Strang *et alia* ("nonmembers") invoked the jurisdiction of the National Labor Relations Board ("NLRB" or "Board") under § 10 (a)-(c) of the National Labor Relations Act, ("NLRA"), 29 U.S.C. § 160 (a)-(c), which authorizes the Board to prevent unfair labor practices. Relying upon *CWA v. Beck*, 487 U.S. 735 (1988), the nonmembers filed several dozen unfair labor practice charges challenging the collection and use of their compulsory union dues by the International Association of Machinists and Aerospace Workers and its affiliates ("IAM") for political, ideological and

noncollective bargaining purposes. The nonmembers' unfair labor practice charges also challenged the use of their dues for union activities outside the United States, and outside their bargaining units (such as union expenses incurred for employees covered by the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*) After many years of delay, the NLRB General Counsel consolidated these many separate unfair labor practice cases, and issued a single nationwide complaint against the IAM and several of its local affiliates, pursuant to § 10(b) of the NLRA, 29 U.S.C. § 160(b).[2]

On May 29, 1992, after a lengthy nationwide trial (held in *inter alia* Hartford, Connecticut, Rosslyn, Virginia, and Sacramento, California), an administrative law judge of the NLRB issued a recommended decision. Timely exceptions and cross-exceptions were filed, and the Board issued its decision and order on December 20, 1995. *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995). That decision and order was a "final order" disposing of all issues. On February 1, 1996, the nonmembers filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit and invoked the jurisdiction of the court of appeals under § 10(f) of the NLRA, 29 U.S.C. § 160(f) (authorizing the filing of petitions for review by persons aggrieved by final decisions of the Board). As noted above, the petition for review was transferred to the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. § 2112. *In re National Labor Relations Board*, 936 F. Supp. 1091 (Jud. Pan. Mult. Lit. 1996). The decision of the Seventh Circuit over which review is now sought, *IAM v. NLRB*, 133 F.3d 1012 (7th Cir.), was issued on January 14, 1998.

Statement of the Facts and Proceedings Below: Petitioners ("nonmembers") are individual employees working for different employers in a wide variety of industries and geographic locations, including General Electric Medical Systems in Wisconsin, McDonnell-Douglas in California and Dynamic

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[2] *See Strang v. Collyer*, 710 F. Supp. 9 (D.D.C. 1989), *aff'd*, 899 F.2d 1268 (D.C. Cir. 1990) (mandamus action filed against the NLRB General Counsel to hasten the consideration of these cases).

Controls in Connecticut. The nonmembers are all employed within bargaining units represented for purposes of collective bargaining by local and district affiliates of the IAM. (App. B at 32a; App. C at 145a-48a).

The IAM is an international labor union whose local and district affiliates represent employees in the United States and Canada, in a wide variety of occupations and employment classifications. (App. B at 32a; App. C at 158a-59a). Within the IAM hierarchy are approximately 1400 local "lodges" (the smallest organizational unit representing employees) and district "lodges." (App. B at 32a). Local lodges generally, and sometimes district lodges, are the actual entities that serve as the nonmembers' exclusive bargaining representatives, pursuant to § (9)(a) of the NLRA, 29 U.S.C. § 159(a). (App. B at 32a; App. C at 156a-57a).

District lodges are made up of two or more small local lodges within a geographic area or industry. In essence, the district lodges are "amalgamated" unions, typically representing employees in divergent industries and occupations, often under different labor statutes. Local and district lodges affiliated with the IAM represent employees under the NLRA, the RLA, the federal Civil Service Reform Act, state and local public sector labor acts, and Canadian labor acts. (App. B at 32a; App. C at 156a-57a; TR 211-16; CPT Exs. 4-9).[3]

In addition to representing the many NLRA-covered bargaining units directly involved in this case, the following list provides a small sample of the representational and litigation activities of the IAM and its affiliates under non-NLRA labor statutes:[4]

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[3] "TR" refers to the transcript of the hearings before the ALJ. "CPT" refers to certain charging parties' exhibits introduced at the hearing. "RUX" refers to respondent unions' exhibits introduced at the hearing.

[4] This list of the IAM's non-NLRA bargaining units is far from exhaustive, serving merely as a sample. But the facts are clear: IAM

(continued...)

1) **Railway Labor Act**: IAM affiliates represent employees at Aeromexico, Swiss Air, United Air Lines, British Airways and Lufthansa German Airlines. (CPT Exs. 4, p. 9; 5, p. 2). *See generally IAM v. National Mediation Board*, 930 F.2d 45 (D.C. Cir. 1991); *IAM v. Transportes Aereos Mercantiles Pan Americanos*, 924 F.2d 1005 (11th Cir. 1991); *IAM v. National Railroad Passenger Corp.*, 915 F.2d 43 (1st Cir. 1990); *IAM v. Northwest Airlines*, 894 F.2d 998 (8th Cir. 1990).

2) **Federal Labor Relations Act**: IAM affiliates represent civilian employees of the United States Department of Defense's Trident (submarine) Refit Facility, and other civilian employees of the United States Navy. (CPT Exs. 5, p. 4; 8, p. 3).

3) **State labor statutes**: IAM affiliates represent public employees of the City of Long Beach, California and the Long Beach (California) Unified School District, and public employees of the City of Quincy, Illinois, among others. (CPT Exs. 5, p. 4; 9, p. 3).

4) **Canadian labor statutes**: IAM affiliates represent employees in many different bargaining units in Canada. (TR 215-16; CPT Ex. 6, p. 5).

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[4](...continued)
expends a large amount of its time, money and energy on non-NLRA units that *per se* have nothing to do with representing any employees under the NLRA. *See, e.g., Congress Examining Options to End Nationwide Freight Rail Shutdown*, Daily Labor Reporter (BNA), June 25, 1992, describing the IAM's role as the leader of a multi-union coalition trying to bring the entire nationwide rail system to its knees by simultaneously striking against Conrail, Amtrak, CSX and many other RLA-covered employers.

For more recent activities, *see Federal Judge Blocks IAM From Using Aid From Flight Attendants' Leader*, Daily Labor Reporter (BNA), Nov. 7, 1996, related to the case of *International Federation of Flight Attendants v. Cooper*, 154 L.R.R.M. 2253 (E.D. Mo. 1996), *further proceedings*, 134 F.3d 917 (8th Cir. 1998). The *Cooper* litigation concerned the efforts of the IAM to convince flight attendants at Trans World Airlines to "jump ship" and join the IAM. The federal court in that case described the IAM's conduct as a "hostile raid against plaintiff IFFA."

As part of their "representation" of the nonmembers, the IAM's local and district affiliates negotiated union security clauses requiring all employees to join the unions or pay dues as a condition of employment. The nonmembers have all chosen to become or remain nonmembers of the IAM and its affiliates, and all object to supporting those unions' political, ideological and nonrepresentational activities. (App. B at 32a; App. C at 158a-59a).

When the nonmembers notified the unions of their objections to supporting political and nonrepresentational activities (under *CWA v. Beck*), the unions provided no financial disclosure information concerning each nonmember's own local or district affiliate. Instead, the IAM sent the nonmembers a sample of unaudited "summaries" from approximately ten of the thousands of other local and district IAM affiliates around the country. (App. B at 58a-63a; Joint Ex. 8).

These one-page local and district "summaries" were prepared by IAM members in good standing who are also full-time salaried employees of the IAM International, called "Grand Lodge Auditors." These "Grand Lodge Auditors" are selected by the IAM's Secretary-Treasurer, and their salaries are derived from the dues and agency fees of members and nonmembers. (App. B at 58a-63a; App. C at 219a-27a; TR 155-74).

Despite their titles, these "Grand Lodge Auditors" are neither licensed accountants nor certified public accountants. They receive little formal training in accounting. For example, one "Grand Lodge Auditor" testified that she received "three or four hours" of training on the agency fee chargeability issue; that she attended a two-day conference and a one-day meeting; and that she is unfamiliar with the term "generally accepted auditing standards." (App. B at 58a-63a; App. C at 219a-27a; TR 406, 411-12, 466).

On December 20, 1995, after several more years of delay, the NLRB issued its first post-*Beck* ruling—largely in favor of the IAM. *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995). The NLRB held that unions are not required to provide nonmem-

bers with financial disclosure independently audited by a certified public accountant. In so holding, the NLRB refused to follow this Court's decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306-08 & nn.17-18 (1986), which requires such independently audited financial disclosure out of "[b]asic considerations of fairness." *Id.* at 306. The Board held that "CPA certification is not required even under *Hudson*—which rather requires an 'independent auditor.'" (App. B at 61a n.85). The NLRB also found that the "summaries" of a small sampling of local and district expenditures provided adequate disclosure to the nonmembers. (App. B at 58a-63a; App. C at 209a-11a).

The NLRB also ruled that the IAM is permitted to charge nonmembers for litigation expenses incurred outside their particular bargaining unit, notwithstanding this Court's holding in *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984), that such expenses are nonchargeable under the Railway Labor Act. (App. B at 51a-55a). While the NLRB conceded that this Court in *Ellis* had provided "guidance" concerning the chargeability of extra-unit litigation expenses, the Board did not find itself bound by this guidance. (App. B at 23a-24a & n.25). Finally, the Board ruled that the IAM could charge nonmembers for its expenditures representing employees in unrelated bargaining units, including employees covered by foreign and public sector labor laws and the Railway Labor Act. (App. B at 49a-51a).

On January 14, 1998, the court of appeals upheld the Board's decision in its entirety. *IAM v. NLRB*, 133 F.3d 1012 (7th Cir. 1998) (App. A at 1a). The court held that unions covered by the NLRA are not required to provide nonmembers with a certified public accountant's independent audit of their financial statements. (App. A at 6a-8a). In so holding, the court expressly refused to follow the District of Columbia Circuit's contrary decision requiring such audits in *Ferriso v. NLRB*, 125 F.3d 865 (D.C. Cir. 1997). (App. A at 7a-8a). Indeed, because the panel recognized that it was creating a split in the circuits on this issue, it polled the entire Seventh Circuit under Circuit Rule 40(e), but no judges voted to grant rehearing. (App. A at 8a).

The court also agreed with the NLRB that nonmembers can be forced to pay for the unions' extra-unit litigation expenditures, without even mentioning this Court's holding in *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984), that such expenditures could only be charged to employees within the bargaining unit in which they were incurred. (App. A at 4a-5a). Finally, the court held that the IAM's allocation of chargeable versus nonchargeable expenses across the entire union structure, made without regard to the industry, bargaining unit, or nation in which the expenditures are made, is permissible in light of this Court's decision in *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991). (App. A at 4a-6a). This Petition follows.

REASONS FOR GRANTING THE WRIT

Although this case presents the NLRB's first effort to apply *CWA v. Beck*, 487 U.S. 735 (1988), it has already engendered a split in the circuits, thus warranting this Court's review to insure uniformity of decisions arising under the NLRA, our nation's basic labor law. *Compare* the instant case, *IAM v. NLRB*, 133 F.3d 1012, 1016-18 (7th Cir. 1998) (App. A at 6a-8a) with *Ferriso v. NLRB*, 125 F.3d 865, 868-72 (D.C. Cir. 1997). Just last month the NLRB remanded a similar case to an administrative law judge for additional fact-finding, expressly recognizing its difficulty in reconciling these conflicting circuit precedents. NLRB Order in *Laborers' Local Union No. 1168 (Work Services Corp.)*, Case No. 16-CB-4316 (April 20, 1998). Similar issues are presented in several other pending NLRB cases, thus necessitating a ruling by this Court to provide guidance to the Board, the parties, and the lower courts. *See, e.g., Teamsters Local 166 (Dyncorp Support Services Operations)*, Case Nos. 31-CB-8333, 31-CB-8683, and 31-CB-8938; *Television Artists-AFTRA (KGW Radio)*, Case No. 36-CB-1491.

While § 14(b) of the Act, 29 U.S.C. § 164(b), permits states to proscribe compulsory "union security" arrangements, twenty-nine states covering two-thirds of the United States population have not elected to do so. In the twenty-nine states that permit union security arrangements, most NLRA-covered collective

bargaining agreements, covering millions of workers, contain such arrangements. Since increasing numbers of employees are learning about, and exercising, their right to refrain from supporting the political and non-bargaining agendas of international labor unions, the issues raised by this case grow more important each day. *See CWA v. Beck*, 487 U.S. 735 (1988); *Miller v. Air Line Pilots Ass'n*, 108 F.3d 1415 (D.C. Cir. 1997), *cert. granted*, 66 U.S.L.W. 3385 (U.S. Nov. 26, 1997) (No. 97-428); *Marquez v. Screen Actors Guild*, 124 F.3d 1034 (9th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3620 (U.S. Mar. 23, 1998) (No. 97-1056); *see also AFL-CIO Endorses Clinton, Approves $35 Million Political Program*, Washington Post, Mar. 26, 1996; *What Union Members Think*, Washington Times, May 1, 1996 (poll by Luntz Research reveals that 40% of union members vote for Republicans and 62% of union members oppose the use of their funds for the AFL-CIO's political campaigns).

QUESTION 1: THE COURTS OF APPEALS HAVE DIVIDED ON THE ISSUE OF WHETHER UNIONS MUST PROVIDE NONMEMBERS WITH FINANCIAL STATEMENTS AUDITED BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, TO EXPLAIN AND JUSTIFY THEIR REDUCED FEE CALCULATIONS. THIS COURT SHOULD RESOLVE THE SPLIT IN THE CIRCUITS.

The issue that has divided the federal courts is the following: must unions covered by the NLRA provide nonmembers with financial statements audited by an independent certified public accountant, just as unions operating in the public sector must do under *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 306-08 & nn.17-18 (1986)? Compare the opinion below, which specifically refused to follow the D.C. Circuit (App. A at 6a-8a), with *Ferriso v. NLRB*, 125 F.3d 865, 868-72 (D.C. Cir. 1997), which repeatedly criticized *California Saw & Knife Works*, 320 N.L.R.B. 224 (1995).

In *Hudson*, this Court held that "basic considerations of fairness ... dictate that the potential objectors be given sufficient

information to gauge the propriety of the union's fee." The Court further held that "adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor*." *Id.* at 307 n.18 (emphasis added). In so holding, the Court recognized that nonmembers were entitled to "verified" and "audited" financial disclosure—prior to any agency fee collections—in order to give them a fair chance to protect their statutory and constitutional rights to refrain from supporting causes and candidates they abhor. *Id.*

Pre-collection independent verification of union financial statements is an important part of the due process safeguards necessary to protect nonmembers from excessive and unlawful fee seizures. *Id.* at 303 n.12 ("Procedural safeguards often have a special bite in the First Amendment context.... The purpose of these safeguards is to insure that the government treads with sensitivity in areas freighted with First Amendment concerns"). These procedural safeguards are necessary whenever a union compels nonmembers to pay an agency fee, regardless of whether the union's coercive power arises from a public or private sector labor statute. *Miller*, 108 F.3d at 1420 ("we see no reason why this statutory duty of fair representation owed to nonmember agency shop employees carries any fewer procedural obligations than does a constitutional duty"); *Nielsen v. IAM*, 94 F.3d 1107, 1113 (7th Cir. 1996) (the procedural protections mandated by *Hudson* "have come to be recognized as appropriate for *Beck* cases as well").

Recognizing this, the Court has required all unions to adequately disclose their financial records, and bear the burden of proving their reduced fee calculations. "Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion." *Hudson*, 475 U.S. at 306, *quoting Abood v. Detroit Board of Education*, 431 U.S. 209, 239-40 n.40 (1977), and *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963); *see also Bromley v. Michigan Educ. Ass'n*, 82 F.3d 686, 692-95 (6th Cir. 1996) (instructing the district court to allow extensive discovery of a

union's financial records), *cert. denied*, ___ U.S. ___, 117 S. Ct. 682 (1997); *Miller*, 108 F.3d at 1423-25 (recognizing the need for independent audits meeting a high degree of "professional adequacy"); *Lehnert v. Ferris Faculty Ass'n*, 556 F. Supp. 316 (1983) (denying request for a protective order to stop broad discovery of a union's financial records). In *Hudson*, this Court understood that objecting nonmembers would be unable to assert and protect their rights unless unions provided independently audited financial disclosure in advance of any collections. *Id.* at 306.

There is also a very practical reason to require unions to provide financial disclosure that has been verified by an independent certified public accountant: employees receiving such reliable and trustworthy information have less need to mount federal court challenges to the union's fee calculation. *Miller*, 108 F.3d at 1421-24; *Tierney v. City of Toledo*, 917 F.2d 927, 938 n.9 (6th Cir. 1990).

Applying these principles, the vast majority of lower courts have interpreted *Hudson*'s "verification by an independent auditor" requirement to mean that an independent certified public accountant must audit the financial statements of each level of the union hierarchy that receives part of the fee, for only then can nonmembers have a fair basis to rely upon—or challenge—the union's calculations. *Ferriso*, 125 F.3d at 869-70 ("We are persuaded that nonmembers cannot make a reliable decision as to whether to contest their agency fees without trustworthy information about the basis of the union's fee calculations"); *Hudson v. Chicago Teachers Union*, 922 F.2d 1306, 1315-16 (7th Cir. 1991), *cert. denied*, 501 U.S. 1230 (1991); *Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6th Cir. 1987), *further proceedings*, 917 F.2d 927, 934-37 (6th Cir. 1990); *Dashiell v. Montgomery Cty.*, 925 F.2d 750, 756 (4th Cir. 1991); *Gwirtz v. Ohio Educ. Ass'n*, 887 F.2d 678 (6th Cir. 1989), *cert. denied*, 494 U.S. 1080 (1990); *Hohe v. Casey*, 727 F. Supp. 163, 166-67 (M.D. Pa. 1989), *aff'd in pertinent part*, 956 F.2d 399, 415 & n.9 (3d Cir. 1992); *Mitchell v. Los Angeles Unified Sch. Dist.*, 739 F. Supp. 511, 514-15 (C.D. Cal. 1990), *rev'd on other grounds*, 963 F.2d 258 (9th Cir. 1992), *cert. denied*, 506 U.S. 940 (1992);

Lowary v. Lexington Local Bd. of Educ., 903 F.2d 422, 430-32 (6th Cir. 1990), *cert. denied*, 498 U. S. 958 (1990) (union's use of a "local presumption" held unlawful, in part because no financial disclosure was provided to nonmembers); *see also Beck v. CWA*, 114 L.R.R.M. 2523, 2524 (D. Md. 1983); *but see Price v. UAW*, 927 F.2d 88 (2d Cir. 1991), *cert. denied*, 502 U.S. 905 (1991).

In contrast, the court below held that unions operating under the NLRA are *not* required to provide nonmembers with financial statements audited by independent certified public accountants. While the court agreed that some form of an "independent audit" is required of public sector unions under *Chicago Teachers Union v. Hudson*, (App. A at 7a-8a), it distinguished this case from *Hudson* by stating that "Hudson was a constitutional case; it involved the First Amendment rights of public employees, not the statutory rights of workers covered by the National Labor Relations Act." (App. A at 7a).

But even the court below recognized the weakness of this distinction, stating that "It is not obvious why this should make a difference, however; in either case the worker is entitled to reliable information about the costs of representation, which are the only costs that he is legally obligated to pay." (App. A at 7a). Indeed, it should not make a difference, for this Court recognized in *Abood v. Detroit Board of Education*, 431 U.S. 209, 230 (1977) that "[t]he very real differences between exclusive-agent collective bargaining in the public and private sectors are not such as to work any greater infringement upon the interests of public employees." The Court also stated that "[t]he differences between public and private sector collective bargaining *simply do not translate into differences in First Amendment rights.*" *Id.* at 232 (emphasis added). *See also Miller*, 108 F.3d at 1420 (same).

Ultimately, the court below held such audits unnecessary under the NLRA, asserting that "*Hudson* does not specify what an 'independent' audit means. It does not say that the auditor must be a CPA or have no affiliation with the union." (App. A at 7a). But *Hudson* teaches precisely that unions are required to

procure independent audits by certified public accountants before seizing agency fees from nonmembers. *See* 475 U.S. at 306-08.

Hudson itself used the term "verification by an independent auditor" interchangeably with the term "certified public accountant," absolutely undermining the claim of the Board and the court below that this Court never required audits by independent certified public accountants. *See Hudson*, 475 U.S. at 310 ("If, for example, the original disclosure by the union had included a certified public accountant's verification of expenditures...."). It is difficult—if not impossible—to see how a paid employee-member of the IAM could be considered "independent."

Indeed, when this Court decided *Hudson*, it understood the nature and purpose of independent certified public accountants' audits: to provide assurance to the users of the financial statements (in this case, the nonmembers) that the information is reliable. Just two terms before *Hudson*, in *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984), this Court analyzed the role of certified public accountants, and described it as follows:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with his client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

Id. at 817-18 (emphasis in original). When it decided *Hudson* two terms later, this Court undoubtedly meant for these same principles of independence and public trust to apply to any "auditors" given the task of "verifying" union statements of chargeable versus nonchargeable expenditures. In fact, *only* independent certified public accountants can fulfill this role, as

the IAM's "Grand Lodge Auditors" have no public responsibilities or independence and owe their allegiance to the IAM and its constitution—not to nonmember agency fee payors or the public. Nevertheless, both the Board and the lower court ruled that the "summaries" prepared by the "Grand Lodge Auditors" constituted adequate financial disclosure, and that nonmembers can either accept them as a proper basis for the reduced fee calculation or file a lawsuit to challenge the proper amount of the fee.

In ruling that union financial disclosure need not be audited by independent certified public accountants, the court below explicitly recognized that it was creating a split in the circuits on this issue, citing the District of Columbia Circuit's decision in *Ferriso v. NLRB*, 125 F.3d 865 (1997). (App. A at 8a). In *Ferriso*, the D.C. Circuit scrutinized the Board's decision in this very case, *California Saw & Knife Works*, and described as "not rational" the Board's rejection of the independent auditor requirement, because:

> any rational interpretation of the NLRA's duty of fair representation will necessarily include an independent-auditor requirement.... We are persuaded that nonmembers cannot make a reliable decision as to whether to contest their agency fees without trustworthy information about the basis of the union's fee calculations.

125 F.3d at 869-70. In contrast to the court below, the *Ferriso* court found it "unlikely" that the IAM's "Grand Lodge Auditors" could ever qualify as "independent" under any reasonable definition of that term. *Id.* at 872; *see also Arthur Young & Co.*, 465 U.S. at 817-19.

The D.C. Circuit's holding in *Ferriso* mirrors the holdings of several courts of appeals—including the Seventh Circuit itself —that the procedural protections mandated by *Hudson* "have come to be recognized as appropriate for *Beck* cases as well." *Nielsen v. IAM*, 94 F.3d 1107, 1113 (7th Cir. 1996), citing *Abrams v. CWA*, 59 F.3d 1373, 1377, 1380 (D.C. Cir. 1995), *Kidwell v. TCIU*, 946 F.2d 283, 294 (4th Cir. 1991) and *Crawford v. Air Line Pilots Ass'n*, 992 F.2d 1295, 1301 (4th Cir.

1993). But standing almost alone, the Board and the court below insist on providing private sector unions with exceptions to *Hudson*'s procedural ("fairness") requirements.

In short, "verification" of union expenditures "*by a local association officer* does not satisfy the requirement that expenditures be verified by an independent auditor." *Lehnert v. Ferris Faculty Ass'n*, 707 F. Supp. 1473, 1480 (W.D. Mich. 1988) (motion to dissolve injunction denied). *Hudson* required "that detailed financial information concerning all major categories of union expenses, including those for payments made to affiliated unions, be audited by a certified public accountant independent of the union." *Tierney*, 824 F.2d at 1506. Only such an audit would provide nonmembers "any reassurance concerning the allocation of costs." *Hohe*, 727 F. Supp. at 167; *see also Ferriso*, 125 F.3d at 869-72; *Abrams*, 59 F.3d at 1381.

This Court should resolve the conflict in the circuits, and ensure that nonmembers forced to pay agency fees under the aegis of the NLRA receive independently audited financial disclosure, just as public sector employees do under *Chicago Teachers Union v. Hudson*.

QUESTION 2: IN *ELLIS v. RAILWAY CLERKS*, THIS COURT RULED THAT NONMEMBERS COVERED BY THE RAILWAY LABOR ACT CANNOT BE FORCED TO PAY FOR UNION LITIGATION EXPENSES INCURRED OUTSIDE THEIR BARGAINING UNIT. THE IDENTICAL PRINCIPLES APPLY UNDER THE NATIONAL LABOR RELATIONS ACT.

The issue here concerns the Board's refusal to follow this Court's unanimous decision under the Railway Labor Act in *Ellis v. Railway Clerks*, 466 U.S. 435, 453 (1984).

More specifically, *Ellis* held that nonmembers need pay only for union litigation "that concerns bargaining unit employees," finding that "[t]he expenses of litigation not having such a

connection with the bargaining unit are not to be charged to objecting employees." Since *Ellis*, the vast majority of courts have held the expenses of extra-unit litigation to be nonchargeable. *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 528 (1991) (plurality opinion); *Pilots Against Illegal Dues v. Air Line Pilots Ass'n*, 938 F.2d 1123, 1130-31 & n.4 (10th Cir. 1991); *Crawford v. Air Line Pilots Ass'n*, 992 F.2d at 1316 (*en banc*) (Russell, J., dissenting);[5] *Albro v. Indianapolis Educ. Ass'n*, 585 N.E.2d 666 (Ind. App.), *adopted sub nom. Fort Wayne Educ. Ass'n v. Aldrich*, 594 N.E.2d 781 (Ind. 1992); *Browne v. Wisconsin Employment Relations Comm'n*, 485 N.W.2d 376, 388 (Wis. 1992); *but see Reese v. City of Columbus*, 71 F.3d 619, 623-24 (6th Cir. 1996), *cert. denied*, ___ U. S. ___, 117 S. Ct. 386 (1996).

A majority of the Board disagreed. The Board majority conceded that *Ellis* provided germaneness "guidance" on the chargeability of extra-unit litigation, but nevertheless refused to follow this "guidance," claiming that *Ellis* was based upon "constitutional considerations." (App. B at 52a). Member Cohen dissented, reasoning that, since this Court in *Ellis* had found such extra-unit litigation expenditures to be nonchargeable under the nearly identical provisions of the RLA, the Board could not escape this precedent by simply asserting that the RLA is a "different" statute. (App B at 21a n.19; App. B at 55 n.78). The court below acquiesced in the Board majority's treatment of extra-unit litigation, failing to mention *Ellis'* unanimous holding on this issue and cryptically observing that litigation is "analytically identical" to all other bargaining-related costs. (App. A at 4a).

In contrast to the Board and the court below, this Court in *CWA v. Beck* held itself bound by *Ellis* and several decades of prior cases decided under the Railway Labor Act:

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[5] In *Crawford*, the majority of the *en banc* Fourth Circuit did not reach the "extra-unit litigation" issue, 992 F.2d at 1301, but a five-member minority did, and held all extra-unit litigation to be nonchargeable. *See* 992 F.2d at 1316.

> Our decision in *[Machinists v.] Street*, [367 U.S. 740 (1961)] is far more than merely instructive here: we believe it is controlling, for § 8(a)(3) and § 2, Eleventh are in all material respects identical. Indeed, we have previously described the two provisions as 'statutory equivalents,' *Ellis v. Railway Clerks*, 466 U.S. 435, 452, n.13 (1984).... In these circumstances, we think it clear that Congress intended the same language to have the same meaning in both statutes.

487 U.S. at 745-46. Thus, *stare decisis* and principles of statutory construction mandate that this Court's decisions under the Railway Labor Act are determinative of the same issues arising under the NLRA—its "statutory equivalent."

In refusing to follow *Ellis*, the Board majority relied upon Justice Blackmun's statement in *Lehnert v. Ferris Faculty Association*, 500 U.S. at 528 (plurality opinion), that "the Court in *Ellis* determined that the RLA, as informed by the First Amendment, prohibits the use of dissenters' fees for extra-unit litigation." (App. B at 52a). However, Justice Blackmun's comment notwithstanding, *Ellis'* holding concerning extra-unit litigation does not mention First Amendment concerns at all. *See* 466 U.S. at 453. More important, *Ellis* held extra-unit litigation nonchargeable in the portion of the opinion in which the Court "inquire[d] whether *the statute* permits the union to charge petitioners for any of the challenged expenditures," *id.* at 445 (emphasis added), not the portion in which the Court addressed First Amendment concerns, at 455-57; *see also Lehnert*, 500 U.S. at 555 ("*Ellis* and *Beck* were statutory cases, but there is good reason to treat them as merely reflecting the constitutional rule") (Scalia, J., concurring in part and dissenting in part).

Thus, without undertaking any analysis of the union's actual litigation expenditures, the Board required nonmembers to fund an amorphous class of extra-unit litigation under the theory that "union litigation of issues arising in connection with collective-bargaining agreements may confer benefits on employees beyond those units immediately affected." (App. B at 54a). But *Ellis* and *Lehnert* absolutely undercut the Board's theory. As Justice Blackmun's plurality opinion in *Lehnert* explained, while

"precedent established through litigation on behalf of one unit may ultimately be of some use to another unit," when "unrelated to an objecting employee's unit, such activities are not germane to the union's duties as exclusive bargaining representative." 500 U.S. at 528.

In this case, the IAM charged nonmembers for more than $3.3 million of its extra-unit litigation, and conceded that only $159,900 was nonchargeable. (RUX 1, tab 13 ¶¶ 126-29 & Schedule 12). Among the "chargeable" litigation expenditures implicitly upheld by the Board were: Department of Transportation route transfer proceedings concerning Aeromexico; bankruptcy litigation concerning NLRA and RLA units; tort cases seeking damages for picket line violence arising in other units; National Mediation Board election procedures; a suit against the Secretary of the Navy over his decision to award a contract to a private employer; defense of a sex discrimination suit; and more than $580,000 spent in litigation over the Eastern Air Lines strike (and secondary boycott litigation, injunctions and bankruptcy cases related to that strike). *Id.*

Although the NLRB majority blithely accepted the union's claim that this mass of union litigation expenses is "collective bargaining related," much of the $3.3 million dollars that IAM claimed as chargeable was spent on general litigation—often under the Railway Labor Act—which can never relate to Alan Strang and the other Petitioners here. This is precisely the type of general litigation *Ellis* held to be nonchargeable. *See* 466 U.S. at 453.

Thus, the Board's theory—that "union litigation of issues arising in connection with collective-bargaining agreements may confer benefits on employees beyond those units immediately affected" (App. B at 52a)—is directly contrary to *Ellis*. In *Ellis*, one of the specific types of extra-unit litigation held nonchargeable was "litigation seeking to protect the rights of airline employees generally during bankruptcy proceedings." 466 U.S. at 453. That litigation was "intervention in an employer's bankruptcy proceedings [that] protected the union members' wages and ensured continued compliance with the collective

bargaining agreement while the employer underwent reorganization." *Ellis v. Railway Clerks*, 685 F.2d 1065, 1074 (9th Cir. 1982), *rev'd in pertinent part*, 466 U.S. 435, 453 (1984). This Court held the bankruptcy litigation nonchargeable even though it arose in direct connection with the collective bargaining agreement in a unit other than that of the objecting nonmembers.[6]

In short, the Board majority's and court of appeals' rejection of *Ellis* cannot be countenanced by this Court. While the Board has some "leeway" in interpreting the NLRA when the law is unsettled, that "leeway" does not extend to baldly rejecting Supreme Court precedents and their underlying rationales. As this Court has said in an analogous context: "Once we have determined a statute's clear meaning, we adhere to that determination under the doctrine of *stare decisis* and we judge an agency's later interpretation of the statute against our prior determination of the statute's meaning." *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536-37 (1992), *citing Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 131 (1990). Because *Beck* held that the limits of compulsory unionism under the NLRA are "identical" to those imposed by the RLA, 487 U.S. at 745-46, the Board majority and the court below were not empowered to reject this Court's clear ruling that litigation outside the nonmember's bargaining unit is nonchargeable. *Ellis*, 466 U.S. at 453. The petition should be granted to ensure that the nation's labor laws are interpreted with consistency and uniformity.

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[6] Moreover, "defending suits alleging violation of the nondiscrimination requirements of Title VII of the Civil Rights Act of 1964" is arguably "a normal incident of the duties of the exclusive representative," but such litigation was also held nonchargeable in *Ellis* unless the nonmembers' own "bargaining unit is directly involved." 466 U.S. at 453.

QUESTION 3: CONGRESS DID NOT INTEND TO FORCE NONMEMBERS COVERED BY THE NLRA TO SUBSIDIZE UNION ACTIVITIES IN UNRELATED BARGAINING UNITS AND INDUSTRIES, AND BARGAINING UNITS COVERED BY PUBLIC SECTOR LABOR LAWS AND CANADIAN LABOR LAWS.

A. The National Labor Relations Board Only Oversees Private Sector Labor Relations Arising Under the National Labor Relations Act. The Board Has No Authority to Require Nonmembers to Support Non-NLRA Activities.

This case also raises a fundamental question about the scope and extraterritorial reach (if any) of the National Labor Relations Act. The issue is whether Congress intended to require nonmembers in a bargaining unit covered by the NLRA to contribute to union expenditures made on behalf of employees in foreign nations, employees of federal, state and local governments, and employees working in completely unrelated industries—including those covered by the Railway Labor Act. The Board and the court below held that Congress intended to allow international labor unions (like the IAM) to force objecting nonmembers to pay for such activities, relying upon *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991) as the basis for upholding such "cross-unit agglomeration." *See also CWA Local 9403 (Pacific Bell)*, 322 N.L.R.B. 142, 144 (1996), *petition for review denied sub nom. Finerty v. NLRB*, 113 F.3d 1288, 1291-92 (D.C. Cir.), *cert. denied*, ___ U.S. ___, 118 S.Ct. 558 (1997). According to the court of appeals, the IAM's allocation of chargeable versus nonchargeable expenses across the entire union structure, made without regard to the industry, bargaining unit, or country in which the expenditures are made, is "the lesser of two evils" (the other being the difficulty that the IAM might face in apportioning its expenses accurately). (App. A at 5a-6a).

The Board and the court of appeals erred in expanding the reach of the NLRA, for nothing in that statute evidences a congressional intent to force NLRA-covered American workers

to fund collectivism in foreign nations, among public sector employees, and among employees covered by the Railway Labor Act. The Board overstepped its statutory bounds in this case, failing to remember that it was established to oversee the National Labor Relations Act and private sector labor relations under that particular statutory scheme, not all unions operating under all labor statutes. The Board does not oversee labor relations under the RLA, state public sector labor laws, or Canadian labor laws. Yet that is the thrust of the Board's decision—that Alan Strang, who works for General Electric Medical Systems in Milwaukee under the NLRA, must support the IAM's labor relations activities governed by the RLA, public sector labor laws, and other countries' labor laws, or face discharge.

While the Board may be charged with ensuring "labor peace" under the NLRA, this mandate does not extend to ensuring "labor peace" in foreign nations with Alan Strang's compelled agency fees. Moreover, while the Board may also be charged with eliminating so-called "free riders" under the NLRA (in the twenty-nine states that have failed to forbid compulsory unionism under 29 U.S.C. § 164(b)), Alan Strang is not a "free rider" when he is willing to fund the negotiation and administration of his own contract, but declines to voluntarily fund the negotiation of contracts for foreign workers, public employees in California, airline workers who reside a continent away from him, or even NLRA-covered employees in unrelated bargaining units and industries.

If the Board's decision allowing the chargeability of worldwide extra-unit "bargaining" activity is not reversed, then the NLRA contains few realistic limits on what a nonmember may be charged. Under those circumstances, the IAM (and every other international union) will be free to charge NLRA-covered employees in the United States for activities in "branch offices" in Mexico, Israel, Estonia, Indonesia and any other country they choose! *See U.S. Labor Leader Seeks Union Support in Mexico*, New York Times, Jan. 23, 1998. But Congress did not enact the NLRA to "unite the workers of the world," or to unite American public sector employees with their

private sector counterparts. *See* 29 U.S.C. § 152(2) and (3) (excluding political subdivisions and their employees from the reach of the NLRA); *see generally Ellis*, 466 U.S. at 451 (holding "organizing" efforts aimed at other bargaining units nonchargeable, even where they allegedly "strengthen" the union).

Moreover, the Board and the court below glossed over the fact that the IAM is charging American workers for its activities in support of foreign bargaining units covered by foreign labor laws. In doing so, they failed to recognize the well-settled law that the NLRA has no extraterritorial effect, because the rights and duties created by the statute are limited solely to domestic employers and employees.

For example, this Court has held that the NLRA does not cover foreign workers who are employed on a foreign-owned vessel, even when temporarily present in an American port. *McCullough v. Sociedad Nacional de Marineros*, 372 U.S. 10 (1963). Further, the NLRA does not cover picketing by an American labor union at an American port where such picketing is aimed at altering the employment relationship between owners of foreign vessels and foreign seamen. *American Radio Ass'n v. Mobile S.S. Ass'n, Inc.*, 419 U.S. 215 (1974); *Windward Shipping (London), Ltd. v. American Radio Ass'n*, 415 U.S. 104 (1974); *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 142-46 (1957).

The courts of appeals have recognized these principles in several NLRA cases, *see e.g., International Longshoremen's Ass'n v. NLRB*, 56 F.3d 205, 210 (D.C. Cir. 1995) and *Dowd v. International Longshoremen's Ass'n*, 781 F. Supp. 1565 (M.D. Fla. 1991), *aff'd*, 975 F.2d 779 (11th Cir. 1992), but the court below failed to recognize them here when it required American workers to subsidize the IAM's expenses representing Canadian bargaining units. As such, the Board and the court below badly misread the nation's basic labor law, and this Court should correct this grievous error affecting millions of employees.

B. The Rights and Duties Created by the NLRA Are Based Upon the Existence of Discrete and Clearly Defined Bargaining Units. The Board and the Court Below Erred When They Allowed the IAM to Ignore These "Bargaining Unit" Limitations at Will.

The Board and the court below disregarded the structure and policy of the NLRA, which mandates that nonmembers be charged only for the activities that relate to their bargaining unit. This "bargaining unit standard of chargeability" is enshrined in the plain language of the NLRA itself, is part and parcel of the Board's effectuation of the Act through all types of election and unfair labor practice procedures, and is uniformly applied in Board decisions and court cases. By abandoning the bargaining unit concept solely in cases where individual employees object to funding nonrepresentational activities (under *CWA v. Beck*), the Board and the court below have flatly ignored the plain language of the Act, and taken a position at odds with longstanding Board and court decisions concerning the importance of identified and discrete bargaining units.

The Act itself is the departure point for the correct analysis of the "bargaining unit standard of chargeability":

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees *in a unit appropriate for such purposes*, shall be the exclusive representatives of all the employees *in such unit* for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

NLRA, § 9(a), 29 U.S.C. § 159(a) (emphasis added).

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the *unit appropriate for the purposes of collective bargaining* shall be the employer unit, craft unit, plant unit, or subdivision thereof . . . .

NLRA, § 9(b), 29 U.S.C. § 159(b) (emphasis added).

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of *the employer* and the representative of *the employees* to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . .

NLRA, § 8(d), 29 U.S.C. § 158(d) (emphasis added).

The statute, 29 U.S.C. § 158(d), does not define "collective bargaining" as the obligation of *any* and *every* union to bargain with *any* and *every* employer (including those operating under the RLA, public sector, or Canadian labor laws). Only when a union has certification rights for a specific and defined unit of employees can it demand that an employer bargain.

An example of how the NLRB properly applies this principle—when it wants to—is shown in *Paperworkers Local 620 (International Paper Co.)*, 309 N.L.R.B. 44 (1992), where the NLRB struck down a "pooled" voting system which allowed the employees in one bargaining unit to veto the contract ratification decisions made by employees in a different unit.

> The pool runs afoul of the Act ... because its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit's contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit's contract.

Id. at 45; *see also Torrington Co.*, 305 N.L.R.B. 938 (1991) (company not obliged to bargain over the elimination of health care benefits for non-unit employees); *Iron Workers Local No. 433*, 266 N.L.R.B. 154, 157 (1983) (unions cannot lawfully require employee to satisfy a dues arrearage incurred in one bargaining unit as a condition of employment in a different unit). The NLRB should have applied these same considerations—but did not—when it permitted the IAM to force Alan Strang, as a condition of his employment with General Electric Medical

Systems, to support far-flung union activities occurring in other bargaining units, many covered by other labor statutes.

In addition to the face of the Act itself, this Court's cases confirm that the "bargaining unit" concept is at the heart of the structure of the NLRA. In *Allied Chemical & Alkali Workers, Local 1 v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971), the Court held that retirees' health benefits were not a mandatory subject of bargaining because those retirees were outside the relevant bargaining unit:

> Together, these provisions establish the obligation of the employer to bargain collectively, "with respect to wages, hours, and other terms and conditions of employment," with "the representatives of his employees" designated or selected by a majority "in a unit appropriate for such purposes." This obligation extends only to the "terms and conditions of employment" of the employer's "employees" in the "unit appropriate for such purposes" that the union represents.

Id. at 164.

Nowhere in the history of the NLRA is there any evidence that an amorphous class of foreign, public sector, and railroad workers—whose only connection to Alan Strang and the other nonmembers is the random "fortuity" that their separately certified local collective bargaining representative turned out to be affiliated with the same international labor union—is to be given the benefit of the dues extracted from Alan Strang and the other nonmembers solely because of the coercive power granted by § 8(a)(3) of the NLRA. "[T]he Board's powers in respect of unit determinations are not without limits, and if its decision oversteps the law it must be reversed." *Pittsburgh Plate Glass*, 404 U.S. at 171 (citations omitted).

In a similar vein, this Court has recognized the tension inherent in a union's representation of employees of competing employers, and stated federal labor policy this way:

> [T]here is nothing in the labor policy [of the United States] indicating that the union and the employers in one bargaining unit are free to bargain about the wages, hours, and working conditions of other bargaining units or to attempt to settle those matters for the entire industry. On the contrary, *the duty to bargain unit by unit* leads to a quite different conclusion. The union's obligation to its members would seem best served if the union retained the ability to respond to each bargaining situation as the individual circumstances might warrant without being straight-jacketed by some prior agreement with the favored employers.

United Mine Workers v. Pennington, 381 U.S. 657, 666-68 (1965) (emphasis added).

Simply stated, the collective activities of airline employees, Canadian employees, and public sector employees do not affect the terms and conditions of employment of NLRA-covered employees like Alan Strang. Thus, to be a proper subject of bargaining under the NLRA—and a proper basis for lawfully discharging nonmembers if they fail to subsidize that activity—an activity must relate to the specifically defined bargaining unit. This Court should grant the petition and ensure a proper and limited interpretation of the NLRA.

CONCLUSION

This Petition should be granted on all issues and the case should be scheduled for full briefing and argument.

Respectfully submitted,

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